

SUPREME COURT OF ARKANSAS

No. 08-1188

JESSICA PACHECO,

APPELLANT,

VS.

ARKANSAS DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

APPELLEE,

Opinion Delivered October 30, 2008

MOTION TO FILE A BELATED NOTICE
OF APPEAL

GRANTED.

PER CURIAM

MOTIONS — MOTION FOR BELATED APPEAL — GRANTED IN TERMINATION-OF-INDIGENT-PARENTAL-RIGHTS MATTER WHERE ATTORNEY CANDIDLY ADMITTED FAULT. — In accordance with *McDonald v. State*, appellant's attorney candidly admitted fault in failing to perfect appeal of termination of indigent parent's parental rights; appellant's motion was therefore granted.

Iris L. Muke, for appellant.

No response.

Appellant Jessica Pacheco, by and through her attorney, Iris L. Muke, has filed a motion to file a belated notice of appeal. The circuit court's order terminating Pacheco's parental rights was filed July 17, 2008. Pursuant to Arkansas Supreme Court Rule 6-9(b)(2) (2008), Pacheco's notice of appeal was required to be filed no later than July 31, 2008, but was not filed until the next day, August 1, 2008. Ms. Muke states that, due to her lack of diligence, Pacheco's notice of appeal was untimely filed.

This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said that there are only two possible reasons for an appeal not being timely perfected: either the party or

attorney filing the appeal is at fault, or, there is “good reason.” 356 Ark. at 116, 146 S.W.3d at 891. We explained:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id., 146 S.W.3d at 891 (footnote omitted).

While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal. *See id.* While the instant case is not a criminal case, we have afforded indigent parents appealing from a termination of parental rights similar protections to those afforded indigent criminal defendants by applying the *McDonald* standard. *See, e.g., Smith v. Arkansas Dep’t of Health & Human Servs.*, 371 Ark. 425, ___ S.W.3d ___ (2007) (granting a motion for belated appeal in a termination-of-parental-rights case).

In accordance with *McDonald v. State, supra*, Ms. Muke has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.